

3. His lack of awareness of the performance of the abortion might be because he is out of town at the time, or because he and his wife are separated, or because they are neither married nor living together. Where the father is aware of the abortion, it is possible that the mother of a child unwanted by her could conceal from the father for at least a period of thirty days the fact that the fetus was born alive.

4. In Planned Parenthood of Missouri v. Danforth, 49 L. Ed. 2d 788 (1976), the Supreme Court held unconstitutional a state law requiring the consent of the father to the performance of an abortion performed during the first twelve weeks of pregnancy. While the Court thus recognized that the rights of the father are secondary to those of the mother in connection with the abortion decision, we do not read that opinion as holding that the same is necessarily true once a fetus has been born alive following the performance of an abortion.

Letter from State Law Department on  
House Bill 1065

May 12, 1977

The Honorable John Carroll Byrnes  
5221 Loch Raven Blvd.  
Baltimore, Maryland 21239

Dear Senator Byrnes:

You have requested our opinion regarding the impact of the Supreme Court decision in Roe v. Wade, 410 U.S. 113 (1973), on current Maryland statutes regulating abortion. For purposes of this opinion we are also including the companion case Doe v. Bolton, 410 U.S. 179 (1973). Both cases address abortion issues, were decided on the same day, and are to be read together, Roe v. Wade, supra, 410 U. S. at 165.

Present state laws regulating abortion are found in Article 43, Sections 137 and 139, Annotated Code of Maryland (1971 Repl. Vol. and 1976 Cum. Supp.) 1

Article 43, Section 139 provides that:

"(a) A person is guilty of a misdemeanor if he "(1) Sells or gives, or causes to be sold or given, any drug, medicine, preparation, instrument, or device for the purpose of causing, inducing, or obtaining a termination of human pregnancy other than by a licensed physician in a hospital accredited by the joint commission for